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March 22, 2006

MEMORANDUM

NSLP 2006-43
RCCI 2006-24

To: All NSLP Sponsors

From: Pat Cook, RD and Katherine Stewart, RD, CPFM
Office of Child Nutrition and School Health
Nutrition Education Program Consultants

Subject: Record-Keeping Requirements

It has come to the United States Department of Agriculture (USDA) attention that a number of State agencies (SA) and school food authorities (SFA) are failing to maintain appropriate records for procurement transactions occurring in connection with the Child Nutrition Programs.

All SFA should be reminded that USDA's regulations at 7 CFR Parts 3016 and 3019, program regulations at 7 CFR 210.9(b)(17), and the terms of the contract between SA and each SFA, require both SA and SFA to retain their program-related records for a period of 3-years from the day the SA's or SFA's final allowable payment under the contract has been recorded. This is true regardless of whether the final payment is recorded prior to the expiration of the contract or subsequent to the expiration date.

When a procurement contract is continued or renewed at annual or other intervals, the retention period for the records of each contract period starts on the day the final payment is recorded in connection with the final renewal. It appears that many SAs and SFAs incorrectly believe that the 3-year record retention begins with the initial contract execution. The 3-year record retention period does not begin until the final contract renewal period has expired and/or the final payment is recorded, whichever occurs first.

Actions such as bid protests, litigation, and audits may result in an extension of this 3-year record retention period. In all such cases, the records must be retained until: (1) the completion of the action and resolution of all issues arising from it; or (2) the expiration of the regular 3-year period, whichever occurs later.

Adequate procurement methods are a prerequisite for receiving funds. If records generated during the performance of the award do not demonstrate compliance with applicable procurement requirements, several possible penalties may follow: disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other appropriate remedies. Examples of such records include:

- A written rationale for the method of procurement;
- A copy of the Request for Proposal or the Invitation For Bid;
- The selection of contract type (fixed price or cost reimbursable);
- The bidding and negotiation history;
- The basis for contractor selection;
- Approval from the State agency to support a lack of competition when competitive bids or offers are not obtained;
- The basis for award cost or price;
- The terms and conditions of the contract;
- Any changes to the contract and negotiation history;
- Billing and payment records;
- A history of any contractor claims; and
- A history of any contractor breaches.